BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26	**Application No. NUSF-50** **Progression Order No. 1**

QWEST CORPORATION'S POST-HEARING BRIEF

Qwest Corporation ("Qwest") submits its brief following the hearings of November 8 and 9, 2006 in this matter as follows:

Introduction

The parties have set forth their positions in multiple rounds of comments and testimony, and in live testimony before the Commission at the hearings of November 8 and 9, 2006. The hearings revealed few new facts, but provided some additional clarifications concerning the positions of Commission Staff and the interested parties. Now that the hearings are complete, the Commission is in largely the same position as before:

- **The Commission issued a decision implementing a "long term" distribution methodology for the NUSF in November 2004, holding that the distributions ordered at that time were "sufficient."**
- **The Commission decided in July 2005 (Docket No. NUSF-4) to lower the NUSF surcharge, which now that previous surpluses are exhausted, will reduce the amount of funds available for distribution.**
- **The Commission decided in October 2005 (Docket No. NUSF-48) to establish a separate wireless infrastructure fund that may require diversion of a portion of the reduced universe of funds away from wireline uses to wireless uses.**
- **Thus, without some change in the surcharge from its current levels, potentially all parties face reductions in the amounts of support they receive.**

Most parties' arguments in this proceeding may be boiled down to the proposition "take money away from other carriers, not us." The Commission cannot make such a choice. If the Commission elects to maintain the current reduced surcharge, any reductions must be done equitably, on a competitively neutral basis. The proposals forwarded by Staff and several parties in this case fail to do so. Qwest's recommendations are competitively neutral, maintain most of the structure of the Commission's November 2004 order (thus keeping the NUSF predictable), and do the least damage to the concepts of "sufficiency" and replacement of foregone implicit subsidies. Qwest therefore urges the Commission to either adopt Qwest's proposals or to reject all proposals to modify the NUSF-26 framework. Relatedly, Qwest does not object to the recommendations of most of the parties to return the NUSF surcharge to prior levels. Adopting such an increase – particularly if reviewed frequently to ensure that distribution levels and surplus levels remain relatively constant, as some commenters have suggested, could obviate the need for the Commission to adopt most of the proposals forwarded in the August 29 Order.

1. Further Reducing Distributions Can Disproportionately Harm Qwest.

The proposed plan reduces the size of the NUSF high cost fund from approximately $71 million to $44 million, a difference of $27 million.[1] As Qwest noted in testimony both before and during the hearing, there is no apparent justification for reducing the fund size by one third, when the surcharge has only been reduced by 17%,

[1] August 29 Order, Attachment A.

roughly half that amount.[2]

Apart from the questions concerning the proposed size of the fund, the reductions affect Qwest more than any other carrier. Qwest's distribution decreases from a calculated, pre-porting amount of $38 million to $24 million, just in the first year: a loss of $14 million. Qwest's base support, on a pre-porting basis, is reduced to less than $10 million under the plan.[3] This means that after the transition mechanisms expire, the fund size will likely remain somewhere near the $44 million fund size proposed – a $27 million reduction compared to the 2006 fund size – and Qwest's distributions will reflect a $28 million reduction. Thus, in effect, the entire amount of reductions in the fund size, after transitions, is reflected in reductions to Qwest's distribution, while the remaining carriers collectively remain neutral.

The picture gets worse when porting is considered.[4] Unless the porting methodology is changed, Qwest will receive no net NUSF support after porting once the transition mechanisms are complete. Qwest's base distribution of less than $10 million compares to porting amounts that currently exceed $10 million annually – more than $9 million for NT&T alone.[5] Thus, if the porting mechanism is unchanged and Qwest is required to port $10 million to its customers, and despite serving most of the lines in the

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[2] *E.g.*, Tr. 364.23 – 365.5 (Hearing Testimony of Peter Copeland); Copeland Prefiled Testimony (Hearing Exhibit 21), p. 5-7.

[3] Copeland Prefiled, p. 6.

[4] Qwest continues to stress the importance of coordinating any solutions reached in this Docket with the decisions in the other two progression orders in this docket and docket C-3554. These solutions must logically, legally, and factually "match" each other or else the solution in any one of these four proceedings could render the other solutions improper or unsustainable.

[5] Prefiled Testimony of Dale Musfeldt, Confidential Exhibit A (Hearing Exhibit 10).

high cost areas the NUSF is designed to support,[6] Qwest would receive no net NUSF support. Such a situation is untenable. It is neither competitively neutral nor sufficient as required by both Nebraska and federal law. Qwest therefore suggests that the Commission adopt the only proposal that has been forwarded by any party in Docket NUSF-50, the porting mechanism proposed in Progression Order No. 2.[7]

At the hearing, Peter Copeland testified that Qwest bears more than ninety percent of the proposed reductions in the transitional mechanisms.[8] These transition mechanisms were ordered just over two years ago, in order to ease the transition towards a cost-based NUSF distribution system. None of the original policy justifications for the transitional mechanisms have changed. Reducing the transitional mechanisms not only disproportionately harms Qwest, they compromise the predictability and sufficiency of the NUSF.

2. The Commission Should Reduce the Rate of Return for Carriers as a First Choice.

Throughout these proceedings, some parties have consistently looked to the earnings cap as some type of guarantee or limit on the profits a carrier can earn. As Qwest has consistently stated, these perspectives miss the mark. The correct question

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[6] Copeland Prefiled Reply Testimony (Hearing Exhibit 22), p. 11.

[7] NT&T attached a spreadsheet to Dale Musfeldt's testimony, but at hearing, Mr. Musfeldt testified that NT&T's spreadsheet was not intended as a concrete proposal, but as a model "to generate a lot of activity and hopefully some input from various providers," and a "good kicking-off point," but NT&T was "unable to work through that to see if that model might not work or if it does or does not." Tr. 257.18 - 258.21. Staff articulated some proposal for the first time during the hearing, *See* Tr. 206.13-22, but that proposal was not presented to any party with sufficient time to provide testimony. Qwest supports the NUSF-50 Progression Order No. 2 methodology because it (a) provides for porting on a proportional basis compared to the then-current level of NUSF support received by the incumbent, and (b) prevents NUSF support being used to support CLEC competition for in-town business and residential lines for which no NUSF support is provided.

[8] Tr. 366.5-10.

for the Commission to ask, given a reduce fund size, is "What level of profitability can the NUSF afford to support?" Lowering the profit level at which NUSF distributions cease is a fair and competitively neutral way to make sure support is targeted to companies that need it the most in order to serve their customers.

3. The Staff View of Sufficiency Is Incorrect.

The Staff view, articulated by Professor Rosenbaum and Mr. Pursley, is that sufficiency of NUSF distributions should be measured by the ability of carriers to attract capital and remain financially viable. This view is incorrect.[9] As a starting point, 47 USC § 254, the federal law regarding state funds, is optional – that is, states are not required to implement a state universal service fund. Many states have no fund, and instead rely on implicit subsidies and federal support to fund high-cost networks. Thus, "sufficiency" cannot be viewed in a vacuum. The Nebraska USF statute provides guidance on what sufficiency means in Neb. Rev. Stat. § 86-323(7), when it states that NUSF support may "replace" lost implicit subsidies from intrastate access mechanisms with explicit NUSF support. The proposal forwarded in the August 29 Order in this docket fails to meet that criterion, because it fails to replace the implicit subsidies Qwest has foregone pursuant to rulings in Docket No. C-1628 with sufficient explicit support.[10]

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[9] Professor Rosenbaum and Mr. Pursley also testified that since the Commission previously found the $65 to $70 million fund size was sufficient in NUSF-26, the Commission need not make such an analysis with respect to a fund size of $44 million. *E.g.,* Tr. 88.15-19. This is illogical. There is no evidence regarding the sufficiency of a $44 million fund as to any particular carrier. Tr. 230.1-231.13. Mr. Pursley agreed that initially, the burden is on the Commission to establish sufficiency. Tr. 135.5-9.

[10] Copeland Prefiled, p. 7-8.

4. Access Reductions Must Be Revenue-Neutral; Thus, As NUSF Distributions Are Decreased, The Commission Must Allow Carriers to Return Access Rates To A Revenue-Neutral Rate.

Though not addressed in the August 29 Order, Qwest believes that any carrier that faces reductions in its explicit NUSF support must be able to replace that lost support with revenue-neutral increases to other rates, including but not limited to switched access. Forcing ETCs to reduce their access rates while other carriers' access rates remain untouched – the Commission's initial approach to NUSF support – was competitively neutral, but only because the Commission provided support to offset those rate reductions. Like many other carriers in Nebraska, Qwest competes with several non-ETC carriers with far higher switched access rates. These non-ETC carriers enjoy a competitive advantage if their switched access revenue opportunities exceed the revenue ETCs gain from lowered access rates plus NUSF high-cost support. Allowing revenue-neutral access rate corrections if NUSF support is reduced merely restores competitive neutrality to the NUSF and switched access rate systems.

Staff argued against such increases, arguing that access increases would not solve the problem on a long-term basis.[11] But these arguments substitute either the Staff's or the Commission's business judgment as to how lost NUSF revenues could be recovered for the carriers' business judgments. Such interference in product pricing decisions is not permitted by the deregulatory nature of Nebraska telecommunications statutes. As to access rates, the only statutory standard is that rates be "fair and reasonable." Neb. Rev. Stat. § 86-140(1). The fact that access rates might not be a long-term solution to NUSF support losses does not mean that at least for the short

[11] Tr. 97.8 – 98.14.

term, revenue-neutral access increases to match competitive carriers' rates are not "fair and reasonable." The Commission must allow carriers to choose the services for which prices may be increased within the deregulatory scheme established by Neb. Rev. Stat. § 86-139 *et seq.*

Conclusion

In conclusion, Qwest recommends that the Commission adopt the steps outlined in Mr. Copeland's prefiled and hearing testimony, and in Qwest's comments filed prior to the hearing and throughout the various phases and progression orders in this docket. More specifically, Qwest suggests that (i) the transition mechanisms ordered in NUSF-26 remain in place, (ii) the Commission adopt the porting mechanism proposed in Progression Order No. 2 in this docket, (iii) the Commission recognize federal support consistent with Mr. Copeland's hearing testimony, (iv) the Commission reduce the profit levels ("earnings caps") beyond which the NUSF will provide support; and (v) the increased rural benchmark of $19.95 be used as the actual benchmark in the NUSF distribution model, not as a separate imputation as suggested in the August 29 Order.

Dated Wednesday, November 29, 2006.

Respectfully submitted,

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Certificate of Service

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